

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

DENNIS CLAYPOOL, individually) Civil No. CV04 00570 ACK KSC
and as Guardian Ad Litem for)
KRISTEN CLAYPOOL, a minor,) DEPOSITION OF
SHERYL CLAYPOOL, SCOTT) MEGAN LANGELEY
CLAYPOOL, and KRISTEN CLAYPOOL) March 31, 2005
8:40 a.m.

Plaintiffs,

vs.

CAPTAIN ANDY'S SAILING, INC.,)
BLUE DOLPHIN CHARTERS, LTD.)
and BLUE DOLPHIN DIVING, INC.,)

Defendants.

MATTHEW ISHAM, individually) Civil No. CV04-00559 ACK KSC
and as Guardian Ad Litem for)
HAYDEN ISHAM, a minor,)
ROXANNE BEST ISHAM,)

Plaintiffs,

vs.

BLUE DOLPHIN CHARTERS, LTD.)
and BLUE DOLPHIN DIVING, LTD.,)
CAPTAIN ANDY'S SAILING, INC.,)

Defendants.

In the Matter of) Civil No. CV05-00017 HG LEK
The Complaint of CAPTAIN)
ANDY'S SAILING, INC., a Hawaii)
corporation, as pro hac vice)
owner, and EVANS PACIFIC, LTD,)
a Hawaii corporation, as owner)
of M/V SPIRIT OF KAUAI, O.N.)
995776, for exoneration from)
or limitation of liability.)

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EXHIBIT

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IN THE MATTER OF THE COMPLAINT) Civil No. CV05-00037 HG BMK
OF THE BLUE DOLPHIN CHARTERS,)
LTD. AND TERRY DONNELLY AS)
OWNERS OF THE VESSEL M/V BLUE)
DOLPHIN, O/N 1082212, FOR)
EXONERATION FROM AND/OR)
LIMITATION OF LIABILITY.)
_____)

DEPOSITION OF MEGAN LANGE LY

Taken on behalf of Plaintiffs Dennis Claypool, individually
and as guardian ad litem for Kristen Claypool, a minor,
Sheryl Claypool, Scott Claypool, and Kristen Claypool at
Pacific Guardian Center, Conference Room B for use by
Pacific Reporting Services Unlimited, Suite 1470, Makai
Tower, 733 Bishop Street, Honolulu, Hawaii, commencing at
8:40 a.m. on March 31, 2005, pursuant to Notice.

Transcribed by: WILLIAM T. BARTON, RPR, CSR #391
Court Reporter, State of Hawaii

PACIFIC REPORTING SERVICES UNLIMITED
Suite 1470, Makai Tower
733 Bishop Street
Honolulu, Hawaii 96813
(808) 524-PRSU

1 A. I don't know.

2 Q. Have you ever been making a scuba diving tour at
3 Mokol'e seaward of the Blue Dolphin's anchorage while other
4 vessels have been transiting the site?

5 A. Have I been conducting a scuba dive?

6 Q. Yes.

7 A. When other boats come through?

8 Q. Yes.

9 A. Come through by me or offshore?

10 Q. Let me try it this way.

11 Do you know Eric Trout?

12 A. Yes.

13 Q. And does Eric Trout, from time to time, conduct
14 scuba diving tours for Blue Dolphin?

15 A. No longer. He used to.

16 Q. Did you ever work with Eric aboard the Blue
17 Dolphin when he was making one of those scuba tours?

18 A. Yes.

19 Q. Eric told us yesterday on at least three
20 occasions that he can recall he was down on a scuba tour at
21 Mokol'e at the dive through site or swim-through sites when
22 boats would pass directly overhead.

23 Did that ever happen to you?

24 A. Yes.

25 Q. On how many occasions?

1 A. I don't know.

2 Q. More than three?

3 A. No. A lot of times, the last one I recall, it
4 was a fishing boat. We had flags up. I even had the
5 float, I believe, with me. He was coming to check out the
6 girls in the bathing suits.

7 Q. And did he pass directly overhead?

8 A. Just about, yes.

9 Q. Did that alarm you?

10 A. Oh, yeah, of course.

11 Q. Did it annoy you?

12 A. Of course.

13 Q. When you went topside, did you complain to
14 anybody about that?

15 A. I was trying to figure out who it was. Local
16 fisherman.

17 Q. Did you ever actually identify the vessel?

18 A. No.

19 Q. Is that the only time you can recall when that
20 occurred?

21 A. It's happened before, in the Virgin Islands.

22 Q. I mean at Mokol'e.

23 A. I don't remember.

24 Q. That's --

25 A. That's the only time that clicks into my head as

1 come close to the dive site?

2 A. So that their whole main focus was specifically
3 watching the divers' bubbles?

4 Q. Any part of their job.

5 Was there anybody on deck that day who, as part
6 of their job, was watching the dive area to make sure that
7 vessels did not transit the area where the divers were
8 diving?

9 A. There was not one person specifically,
10 continuously watching divers' bubbles, and for other -- or
11 boat traffic.

12 Q. Did you see the Spirit approaching the dive site?

13 A. No.

14 Q. Do you know whether anybody in the crew saw the
15 Spirit approaching the dive site?

16 A. I don't know.

17 MR. FORMBY: Let me object on the record to the
18 extent that it assumes facts not in evidence, "approaching
19 the dive site."

20 MS. BLACK: I object to lack of personal
21 knowledge.

22 (Discussion off the record.)

23 BY MR. HILLSMAN:

24 Q. Megan, at what point in the day did you first
25 notice the Spirit?

1 A. When we were turning back around.

2 Q. Did you have your back to the Spirit at the time
3 of the accident?

4 A. Yes.

5 Q. And where was the Spirit when you first turned
6 around and saw it?

7 A. Out past the Lucky Lady.

8 Q. Were the divers already on the surface, the scuba
9 divers?

10 A. Yes.

11 Q. Where did you see them?

12 A. I saw the divers -- when I heard the screams for
13 help, the whistle, they were almost, from what -- my best
14 recollection is they were out by the port bow. And then
15 Spirit of Kauai was out past Lucky Lady.

16 Q. How far from the Blue Dolphin, from the port bow
17 of the Blue Dolphin, did you see the divers?

18 A. I don't know. It was a long time ago.

19 Q. I understand.

20 A. I don't know.

21 Q. Can you give us your best estimate in feet,
22 yards, any unit of measure that you think is appropriate.

23 How far from the port bow do you think those
24 divers surfaced?

25 A. My best estimate is about a boat length.


CERTIFICATE

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

I, WILLIAM T. BARTON, RPR, Certified Shorthand Reporter, State of Hawaii, do hereby certify that on March 31, 2005 at 8:40 a.m. there appeared before me MEGAN LANGEY, the witness whose deposition is contained herein; and that prior to being examined was duly sworn; that I am neither counsel for any of the parties herein, nor interested in any way in the outcome of this action;

That the deposition herein was by me taken down in machine shorthand and thereafter reduced to print via computer-aided transcription under my supervision; that the foregoing represents a complete and accurate transcript of the testimony of said witness to the best of my ability.

Dated this 10th day of April 2005 at Honolulu, Hawaii.



WILLIAM T. BARTON, CSR No. 391

Notary Public, State of Hawaii

My Commission expires August 7, 2005